

5 OFFICIAL OPINIONS OF THE COMPLIANCE BOARD 83 (2006)

NOTICE REQUIREMENTS – TIMING – NOTICE GIVEN SOON AFTER SCHEDULING OF MEETING, HELD TO COMPLY WITH THE ACT

November 29, 2006

Mr. Roger Lamb

The Open Meetings Compliance Board has considered your complaint that the Planning and Zoning Commission of Rising Sun violated the Open Meetings Act by failing to provide timely notice of a meeting on September 11, 2006.¹ For the reasons given below, we conclude that, if notice was given promptly after a determination that the meeting would be held on September 11, the notice was timely, and there was no violation.

I

Complaint and Response

You wrote that you had “scanned the newspapers expecting an ad for a special town meeting of the Planning and Zoning Commission concerning the controversial rewriting of Rising Sun’s Comprehensive Plan.” The complaint then alleged that a meeting on this topic, held on September 11, 2006, “has only been advertised for two business days! The ad has only appeared in the Sept. 7 & 8 Cecil Whig. The ad specifically considers amending the Comprehensive Plan for new and unspecified growth areas. Every town in Cecil County advertises a comprehensive agenda three weeks prior to the meeting.” The complaint expressed concern that this short period of notice was “a convenient way to minimize opposing opinions and keep the public in the dark about major unsolicited growth planned for the Rising Sun area without ANY public input.”² The complaint urged that, for meetings of this kind, the public should be given “at least two weeks notice.”

In a timely response on behalf of the Town of Rising Sun, Mayor Judith Cox denied that the Open Meetings Act had been violated. With respect to the September

¹ Your complaint also referred to matters that are beyond the jurisdiction of the Open Meetings Compliance Board and, hence, are not addressed in this opinion.

² Whether any “public input” is to occur at a meeting is a matter left to other law. The Open Meetings Act affords the public the right to attend and observe an open meeting, not to participate in it.

11 meeting, the response stated as follows: “The Town Code does not have specific advertising provisions for Planning and Zoning Commission meetings, however the Town felt it was appropriate to publicize the date, time, and nature of topics to be discussed as soon as it was known there would be a quorum present. As was noted in the complaint, the public notice was printed in the Cecil Whig on September 7 and 8.” The response included a “public notice” dated September 6, which indicated that the Planning and Zoning Commission “will be conducting a special meeting to consider new growth areas to be added to the amendments for the comprehensive plan The special session shall be conducted from the third floor of Town Hall, Monday, September 11, 2006 at 7:30 pm.” We infer from the response that the substance of this notice appeared in the newspaper.

More generally, the response pointed out that the September 11 meeting was not the only one on this topic. The Planning and Zoning Commission held two other meetings concerning the Comprehensive Plan. According to the response, “These are hardly the actions of a commission wishing to limit public input or minimize opposing viewpoints or opinions.” The response concluded by asserting that the Town “has been and remains responsible in its compliance and conduct regarding the requirements of the Open Meetings Act. The Town acts responsibly and diligently in making the public aware of meetings through public notices in the local newspaper, [on] our website and [at] Town Hall We believe the alleged complaint is unfounded and without merit.”

II

Analysis

The Open Meetings Act requires “reasonable advance notice” of a meeting. §10-506(a) of the State Government Article, Maryland Code. This wording reflects a legislative decision not to require any specific interval between notice of a meeting and the holding of the meeting itself. It may be, as the complaint suggested, that municipalities in Cecil County routinely give a few weeks notice of meetings like that held in Rising Sun on September 11. If so, that practice is legally immaterial. The Act does not oblige Rising Sun to give two weeks or any other particular period of advance notice.

Whether notice is “reasonable” can only be determined in context. If a meeting is scheduled long in advance, notice that is suppressed until shortly before the meeting is unreasonable and, consequently, unlawful. On the other hand, notice given promptly after the scheduling of a meeting is reasonable in its timing, even if the meeting will occur soon thereafter. The touchstone of reasonableness is whether a public body gives notice of a future meeting as soon as is practicable after it has fixed the date, time, and place of the meeting. *See 1 OMCB Opinions 56 (1994) (Opinion 94-1).*

Rising Sun's response on this crucial point is sparse but explicit: Notice was given "as soon as it was known there would be a quorum present." If this was not known until September 6, the posting of notice on that date and publication of the notice in the newspaper over the next two days constitute the "reasonable advance notice" required by the Act.

III

Conclusion

In summary, the Open Meeting Compliance Board finds that, if the decision to meet on September 11 was not made until a few days before the meeting, notice given promptly after the decision complied with the Act.

OPEN MEETINGS COMPLIANCE BOARD

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